

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

West Bend Mut. Ins. Co.,)
)
Plaintiff,)
)
v.) Case No. 21-CV-00201-HFS
)
Joseph Hammerly,)
)
Defendant.)

ORDER

Plaintiff West Bend Mutual Insurance Company has filed a motion for default judgment against Defendant Joseph Hammerly for failure to answer. (Doc. 4).

After reviewing the motion (Doc. 4) and related complaint (Doc. 1), it has come to the court's attention that it must confirm the existence of subject matter jurisdiction. "In every federal case the court must be satisfied that it has jurisdiction before it turns to the merits or other legal arguments." Carlson v. Arrowhead Concrete Works, Inc., 445 F.3d 1046, 1050 (8th Cir. 2006). The concern here is whether there is an actual case or controversy and whether all necessary parties have been joined pursuant to Rule 19 of the Federal Rules of Civil Procedure.

This is a declaratory judgment action with respect to policies of insurance issued by West Bend to the Little Learner, Inc., a daycare facility. (Doc.1 ¶ 7). West Bend alleges in its complaint that it has received a demand letter pursuant to the policy it

issued to Little Learner for injuries suffered by a minor child, B.G. The allegations state that the minor child was sexually abused by defendant Joseph Hammerly at the Little Learner facility. (Doc.1 ¶¶ 8,9). West Bend has named as a defendant Joseph Hammerly and seeks a declaration that there is “no coverage whatsoever for allegations of false imprisonment, sexual molestation, sexual abuse and/or sexual assault directed against Joseph Hammerly related to abuse of children at Little Learner and that West Bend has no duty to defend Defendant Joseph Hammerly for the claims made against him by B.G.” (Doc. 1, p. 9-10).

West Bend has now filed a motion for default against Joseph Hammerly for failure to answer. (Doc. 4). However, the motion is denied without prejudice on two grounds. First, the Court has concerns as to whether there is a justiciable controversy as there is no allegation that Hammerly has demanded coverage under the policy of insurance. Second, the Court has concerns as to whether the necessary parties have been named in this suit because the policy holder, Little Learner Inc., is not a named defendant. West Bend may file a renewed motion addressing these issues within thirty days of this ORDER.

s/ Howard F. Sachs
HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

May 11, 2021
Kansas City, Missouri